

# **Appendix L**

## **Sample Agricultural Easement**

*The following is a sample easement patterned after an Ohio Department of Agriculture easement, but modified to be applicable to the U.S. Fish and Wildlife Service. This is a draft provided to give the reader a general idea of what such an easement would look like. Actual content would vary depending upon the landowner's interests and the location and natural resource values of the specific tract of land.*

*Sample*

**PERPETUAL AGRICULTURAL EASEMENT**

THIS INDENTURE, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, whose address is \_\_\_\_\_, and hereinafter referred to as the "Grantor(s)" and the UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior or his authorized representative, hereinafter referred to as the "Grantee"

WITNESSETH THAT

WHEREAS, the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718d(c); the Fish and Wildlife Act of 1956, U.S.C. 742a-742j; the Emergency Wetland Resources Act of 1986, 16 U.S.C. 3901; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1534 and Land and Water Conservation Fund Act, 16 U.S.C. 460l-9(a)(1), authorize the Secretary of the Interior to acquire lands or waters or interests therein including the right to acquire Agricultural Easements for the development, advancement, management, conservation and protection of fish and wildlife resources. The purpose of this easement is to purchase development rights while reserving unto the Grantor certain agricultural use of the property and to provide and protect quality habitat on the lands and wetlands described herein and such lands and wetlands shall be maintained and improved to provide cover and food for a varied array of aquatic, terrestrial, and avian wildlife, particularly migratory birds, and threatened and endangered species, and

WHEREAS, the lands and wetlands described below contain existing or potential habitat suitable for use for wildlife management purposes, or could impact such habitats on the Little Darby National Wildlife Refuge, and

NOW, THEREFORE, in and for consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the Grantors hereby grant to the United States, commencing with the acceptance of this Indenture by the Secretary of the Interior or his authorized representative, a Perpetual Agricultural Easement in, on, over and across the following described lands, to wit: \_\_\_\_\_ County, Ohio

A tract or parcel of land.....

Together with the right of the Grantee to enter the property at reasonable times to ensure compliance with the provisions of the easement.

Subject, however, to all valid existing rights-of-way for highways, roads, railroads, pipelines, canals, laterals, electrical transmission lines, cable lines, and all mineral rights.

The conveyance hereunder shall be effective on the date of the execution of this indenture by the Secretary of the Interior or his authorized representative; provided, however, that such acceptance must be made within \_\_\_\_\_ calendar months from the date of the execution of this indenture by the Grantor, or any subsequent date as may be mutually agreed upon in writing by the parties hereto prior to the expiration of such date; and provided further, however, that in the event that such acceptance is not made by such date, this indenture shall be null and void.

### 1. Statement of Purpose

It is the primary purpose of the Agricultural Easement to enable the Property hereinafter described to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity and to preserve or implement certain conservation practices as described in section \_\_\_\_ of this document. No activity which shall significantly impair the actual or potential agricultural use of the land shall be permitted.

### 2. Present Condition Report

The Property and its current use and state of improvement are described in Exhibit A, "Present Condition Report", attached to this instrument and incorporated into it as if fully rewritten herein, prepared by the Grantee with the cooperation of the Grantor, and acknowledged by both parties to be accurate as of the date of this Easement. This report may be used by the Grantee to document any future changes in the use or character of the Property in order to ensure the terms and conditions of this Easement are fulfilled. This report, however, is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use. The Grantor and Grantee have copies of this report.

### 3. Rights and Responsibilities Retained by Grantor

Notwithstanding any provisions of this Easement to the contrary, the Grantor reserves to themselves and their successors all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Property, together with any rights not specifically prohibited by or limited by this Easement, not inconsistent with the Statement of Purpose herein. Unless otherwise specified below, nothing in this Easement shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which the Grantor had no control. Grantor understands that nothing in this Deed relieves (him) (them) (her) of any obligations or restrictions on the use of the Property imposed by law.

### 4. Right to Farm, Current Agricultural Use Valuation

Grantor retains the right to farm, or permit others to farm, in accordance with applicable local, state and federal laws and regulations.

The Property is, as of the date of execution of this Deed, valued for purposes of real property taxation, under Section 5713.31 of the Ohio Revised Code, at its current value for agricultural use. The Grantor shall not fail, without good cause, to annually file a renewal application under Section 5713.3 of the Ohio Revised Code.

### 5. Agricultural Education Programs

As part of the agricultural activities of the farm, the Grantor shall reserve the right to conduct or authorize another party (individual or organization) to conduct educational programs and public field days on the Property for the purpose of teaching about agricultural practices and promoting awareness of agriculture as long as it does not affect the agricultural values or status of the Property.

### 6. Right to Privacy

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property, notwithstanding this provision, Grantee shall have the right to inspect the property and enforce the provisions of this Easement in accordance with Article 18 herein.

## 7. Right to use the Property for Customary Rural Enterprises

Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, bed and breakfasts, roadside market stands, and riding stables so long as these uses do not affect the status of the land as agricultural land.

## 8. Procedure to Construct Buildings and other Improvements

The Grantors' rights to construct or reconstruct buildings and other improvements are described in subparagraphs (a) through (g) below. Any construction or reconstruction not permitted below, or not previously approved by the Grantee, is prohibited. Before undertaking any construction or reconstruction that requires advance permission, the Grantor shall notify the Grantee and obtain written permission.

- (a) Fences - Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife, without any further permission of the Grantee.
- (b) Agricultural Structures and Improvements - Existing agricultural structures and improvements may be repaired, reasonably enlarged and replaced at their current locations, as shown on Exhibit A, without further permission from the Grantee. New buildings and other structures and improvements to be used primarily for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Property, but not including any dwelling or farm labor housing, may be built on the Property without any further permission of the Grantee provided they are located in the "Farmstead Area" as indicated on Exhibit A. Any new buildings, structures or improvements proposed for locations outside the "Farmstead Area" may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within reasonable time, unless it determines that the proposed building, structure or improvement would significantly diminish or impair the agricultural values or status of the Property.
- (c) Farm Support Housing - New single or multi-family dwellings or structures to be used primarily to house farm tenants, employees or others engaged in agricultural production on the Property may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time, unless it determines that the proposed building, structure or improvement would significantly diminish or impair the agricultural values or status of the Property.
- (d) Single-Family Residential Dwellings - All existing single-family residential dwellings may be repaired, reasonably enlarged and replaced at their current locations as shown on Exhibit A, without further permission of the Grantee. New single-family residential dwellings, together with reasonable appurtenances such as garages and sheds, may be built on and subdivided from the Property only with permission of the Grantee. All appurtenant structures shall be contained within a radius of 250 feet from the residence itself. It is understood that the Grantor may relinquish (his) (her) (their) rights to construct the new residential dwellings referred to herein at any time.
- (e) Existing Recreational Improvements - All existing recreational improvements may be repaired, reasonably enlarged or replaced at their current locations without further permission of the Grantee.

- (f) New Recreational Improvements - New Recreational improvements may be built within the area identified as "Farmstead Area" on Exhibit A. Any new recreational improvements proposed for locations outside the area identified as "Farmstead Area" on Exhibit A may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed in the Property.
- (g) Utility Services and Septic Systems - Installation, maintenance, repair, replacement, removal and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted herein, and to grant Easements over and under the Property for such purposes, is permitted. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system which exists on the Property at the time of this Easement, or the construction of a septic or other underground sanitary system, for the benefit of any of the improvements permitted herein, is permitted.

#### 9. Subdivision

The legal subdivision of the Property, recording in a subdivision plan, partition, or any other division of the Property into two or more parcels, is prohibited without the advance written permission of the Grantee. This prohibition applies regardless of how many separately described parcels are contained in the legal description of the property covered by this easement. The Grantee shall not give such permission, unless the Grantee determines that the proposed subdivision will not substantially diminish or impair the agricultural viability or values of the Property. It is understood that notice of this Easement will be recorded on any approved subdivided, partitioned or otherwise divided parcels.

The Farm Residence, the additional residential dwelling, agricultural buildings, and other improvements which are shown in Exhibit A shall not be subdivided and shall remain a part of the Property.

#### 10. Conservation Practices

All farming operations shall be conducted in a manner consistent with a farm conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by another qualified conservation professional approved by the Grantee. This plan shall be updated periodically, and in any event at the time the basic type of agricultural operation on the Property changes or at the time ownership of the Property changes. All farming operations shall be conducted in accordance with all applicable federal, state and local laws and regulations.

Specific conservation practices that must be preserved or implemented by the grantee are shown in Exhibit \_\_\_ and are described as follows:

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with all applicable federal, state and local laws and regulations.

#### 11. Forest Management

Trees in areas not covered by the conservation practices areas described in Section 10 may be removed, cut, and otherwise managed to control insects and disease, to prevent personal injury and property damage, for firewood and other uses, including construction of permitted improvements and fences on the Property. The cutting, removal or harvesting of trees, including clearing land for cultivation, use of livestock, or commercial timber harvesting, may only be undertaken if in accordance with either the conservation

plan referenced in Paragraph 10 herein or a forest management plan prepared by a professional forester.

12. Mining

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantee determines that the proposed mining or extraction will not substantially diminish or impair the agricultural values or status of the Property. Notwithstanding any other provision of this Easement, not more than two (2) surface acres of the Property may be disturbed by mining or other extractive activities as may be reasonable necessary and incidental to carrying out the improvements and agricultural uses permitted on the Property by this Easement.

13. Paving and Road Construction

Construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Easement are permitted. Other than the approved roads and barnyard areas indicated on Exhibit A, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantee determines that the proposed paving or covering of the soil, or the location of any such road, will not substantially diminish or impair the agricultural values or status of the Property.

14. Dumping and Trash

No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property, except as reasonably required for the use of the Property for agricultural activities, and except as in accordance with applicable local, state, and federal laws and regulations. Materials located in dump sites existing as of the date of this Easement, as indicated on Exhibit B, may remain. The storage of agricultural products, byproducts, and agricultural equipment on the Property, so long as such storage is done in accordance with all applicable government laws and regulations, is permitted.

15. Water Rights

Grantors shall retain and reserve the right to use any appurtenant water rights necessary and sufficient to maintain the agricultural productivity of the Property. Grantors shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Property itself.

16. Ongoing Responsibilities of Grantors and Grantee

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantors as owner of the Property. Among other things, this shall apply to:

**Taxes** - The Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.

**Upkeep and Maintenance** - The Grantors shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

Liability and Indemnification - Grantors agree to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Property or any claim thereof. In addition, Grantors warrant that Grantee is an additional named insured on Grantor's liability insurance policies covering the Property.

17. Extinguishment of Development Rights

Except as otherwise reserved to the Grantors in this Easement, the parties agree that all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating any other property.

18. Enforcement

Notwithstanding any provision herein to the contrary, with reasonable advance notice to the Grantor, the Grantee shall have the right to enter the Property for the purpose of inspecting for compliance with the terms of this Easement. The Grantee, or their designated representative, shall have the right to inspect and to supervise and enforce the Easement and shall be granted, with reasonable advance notice to the Grantor, the right to enter the Property on behalf of the Grantee for the purpose of inspecting for compliance with the terms of this Easement.

The Grantee shall have the right to prevent violations and remedy violations of the terms of this Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law against any party or parties attempting to violate the terms of this Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural values of the Property, the Grantee shall give the Grantors written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantors to restore the Property to its condition prior to the violation as restoration of the property may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantors shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. In any case where a court finds no such violation has occurred, each party shall bear its own costs.

19. Amendment of Easement

This Easement may be amended only with the written consent of both the Grantee and the Grantors. Any such amendment shall be consistent with the "Statement of Purpose" of this Easement and with the Grantee's Easement amendment policies. Any such amendment shall be duly recorded.

20. Interpretation

This Easement shall be interpreted under the laws of the State of Ohio and the United States Government, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its agricultural purposes.

21. Perpetual Duration; Severability

The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantors or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms,





25. Subsequent Liens on Property

No provisions of this Deed of Agriculture Easement shall be construed as impairing the ability of Grantors to use this Property as collateral for subsequent borrowing.

26. Subsequent Easement/Restrictions on the Property

Notwithstanding paragraph 8(g) of this document, the grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise diminish or impair the agricultural values of the Property are prohibited, except with the advance written permission of the Grantee.

27. Grantors' Environmental Warranty

The Grantor warrants that he has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable federal and state law, and hereby promise to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws.

## SPECIAL PROVISIONS

This Indenture shall not be binding upon the UNITED STATES OF AMERICA until accepted on behalf of the United States by the Secretary of the Interior or his authorized representative, although this Indenture is acknowledged by the Grantor to be binding upon him and to remain so until the expiration of said period of acceptance, as hereinabove described, by virtue of payment to the Grantor, by the UNITED STATES OF AMERICA, of the sum of One Dollar, the receipt of which is hereby expressly acknowledged by the Grantor.

It is further mutually agreed that no Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract is made for the general benefit of incorporation or company.

Payment of the consideration shall be made by a United States Treasury check after acceptance of this Indenture by the Secretary or his authorized representative and after the Attorney General, or in appropriate cases, the Solicitor of the Department of the Interior shall have approved the Easement interest thus vested in the United States.